

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Review of the Emergency Alert System ) EB Docket No. 04-296  
 )

To: The Commission

**COMMENTS IN RESPONSE TO PETITION FOR IMMEDIATE  
INTERIM RELIEF**

**I. Introduction.**

The National Association of Broadcasters (“NAB”)<sup>1</sup> hereby responds to Minority Media and Telecommunications, *et al.’s Petition for Immediate Interim Relief*.<sup>2</sup> NAB agrees with Petitioners that the events surrounding recent natural disasters highlight the need to examine how best to ensure wide dissemination of emergency information. Broadcasters recognize the critical role they play in informing the public of national, state and local emergencies. Through the use of live news coverage and the EAS, broadcasters ensure that the local communities they serve have timely access to critical, and often-life

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<sup>1</sup> NAB is a nonprofit, incorporated association of radio and television stations and networks that serves and represents the American broadcasting industry.

<sup>2</sup> In the Matter of Review of the Emergency Alert System, *Petition for Immediate Interim Relief*, EB Docket No. 04-296, filed Sept. 20, 2005 (“*Petition*”). Pursuant to 47 C.F.R. § 1.45, responses to any Petition filed must be made within 10 days after the original pleading is filed. The Petition, however, did not post on the Commission’s Electronic Comment Filing System (“ECFS”) until the afternoon of October 4, 2005. Thus parties were unaware of the appropriate filing deadline. NAB respectfully requests the Commission accept this response as timely filed. The Commission recently granted similar relief due to delayed ECFS postings in MB Docket No. 05-255.

saving, information. And, broadcasters remain committed to working with federal, state and local officials to explore ways to improve this service.

Petitioners seek revisions to part 11 of the Commission's rules governing the Emergency Alert System ("EAS") to require the dissemination of multilingual local, state and national emergency information.<sup>3</sup> While NAB agrees that the goal of *Petition* is laudable, as we explain below, Petitioners' specific proposals raise numerous statutory and practical questions that must be addressed.

## **II. The Commission's Authority Over Presidential Level Messages And State And Local Plans Is Limited.**

The first question to ask is whether the Commission has authority to do what the *Petition* asks. Petitioners urge the Commission to modify its rules to "provide that the 34 PEP stations would air all Presidential level messages in both English and Spanish." *Petition* at 13. The Commission, however, does not possess the authority to mandate the content of Presidential level messages. Rather, the Federal Emergency Management Agency ("FEMA") is "responsible for implementation of the national level activation of EAS, test, and exercises."<sup>4</sup> Thus, it would appear to be FEMA, in coordination with the Department of Homeland Security and the White House, not the FCC, that can determine that the Presidential level messages will be delivered on a bilingual basis.<sup>5</sup>

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<sup>3</sup> Current EAS rules provide that EAS announcements may be aired in the same language as the primary language of the station. *See* 47 C.F.R. § 79.2(b)(3).

<sup>4</sup> In the Matter of Review of the Emergency Alert System, *Notice of Proposed Rule Making*, EB Docket No. 04-296, rel. Aug. 12, 2004 ("*Notice*").

<sup>5</sup> As the Commission is aware, the EAS system has never been activated intentionally on a national level. The national component of the EAS legacy system was created at a time when the Executive Office did not have adequate access to media outlets. Today, should the President wish to address the nation, there is nearly-instantaneous access to a multiplicity of media sources. For this reason, it would seem that this aspect of the *Petition* is not critical at this time.

A similar question must be asked with regard to Petitioners' request that the FCC to modify its rules to include a Local Primary Spanish ("LP-S") station designation and "provide that state and local EAS plans would designate an LP-S station in each of the local areas in which an LP-1 has been designated." *Petition* at 14.<sup>6</sup> While the Commission can require the creation of additional and specialized LP stations, it lacks statutory authority to require non-licensees, including local, state and federal entities, to either (1) develop emergency plans to implement these new LP stations or (2) require that emergency information be distributed in Spanish or other languages. The Commission's authority extends only to requiring that, once created, state and local plans be reviewed and approved by the Director of the Office of Homeland Security, Enforcement Bureau, prior to implementation consistency with national plans, Commission regulations, and EAS operation. *See* 47 C.F.R. § 11.21.

In contrast, FEMA has direct authority over state and local emergency funding, and would appear to be the government agency best suited to ensure that all state and local governments are fully implementing state and local emergency plans. Under the Stafford Act, the President can:

...establish a program to provide technical and financial assistance to States and local governments to assist in the implementation of predisaster hazard mitigation measures that are cost-effective and are designed to reduce injuries, loss of life, and damage and destruction of property, including damage to critical services and facilities under the jurisdiction of the States and local governments.

Effective Oct. 30, 2000. 42 U.S.C. § 68.

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<sup>6</sup> In addition, Petitioners propose that for each radio market having a population of a language minority of either 50,000 or 5% of the total market population, the Commission modify its rules so that state and local plans may designate a Local Primary Multilingual ("LP-M") station. *Petition* at 15.

Thus, through existing legislation, such as the Stafford Act, FEMA is already authorized to assist state and local governments in developing emergency plans, including means by which non-English speaking persons can be appropriately warned.<sup>7</sup> Obviously state and local emergency governments must receive adequate funding and strong federal guidance to ensure that all jurisdictions are able to meet the public warning needs and first responder's needs of their communities, for both English and Non-English speakers alike. NAB urges Petitioners to work with FEMA and broadcasters to explore these issues further.

### **III. Petitioners Raises A Number Of Issues That Require Further Consideration.**

The *Petition* also raises a number of practical issues that warrant further and careful consideration by the Commission. For example, Petitioners propose that the Commission amend 47 C.F.R. § 11.52(d) to provide that “at least one broadcast station in every market would monitor and rebroadcast emergency information carried by local LP-S and LP-M stations.” *Petition* at 15. The *Petition* does not, however, explain how such a rule would be implemented. To note just one practical problem, the LP-S and LP-M designated stations, however, may be sited in different areas, and thus, it may not be possible (due to intervening terrain or signal obstruction) for a station to monitor multiple stations.

Nor is it apparent that a single-monitoring designee would appropriately reach the intended audience. How, for example, would non-English speaking listeners in a given

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<sup>7</sup> In the same year the Stafford Act was passed, the Executive Office also recognized that future objectives of EAS were “completing development of all State and local EAS plans” and “developing EAS educational and training packages for government and industry personnel.” *Effective Disaster Warnings, Report by the Working Group on Natural Disaster Information Systems Subcommittee on Natural Disaster Reduction,*

radio market be alerted if they are not tuned into the one “designated” monitoring station? What if the monitoring station is located in an area (*e.g.*, San Francisco or New York) where there are speakers of multiple languages that currently listen to diverse radio formats? To which channel(s) should these listeners be redirected?

NAB suggests that rather than rush to a rule without knowing how it can be implemented, it would be better to carefully consider how non-English speaking persons are currently receiving their information, including emergency information provided on non-English broadcast channels, to ensure that a public warning system designed to reach non-English speakers effectively reaches its intended audience.

NAB also suggests that Petitioners’ proposal that the Commission modify 47 C.F.R. § 11.52(d) to specify that, if a local LP-S or LP-M station “loses its transmission capability, stations remaining on the air should broadcast emergency information in the affected languages (at least as part of their broadcasts) until the affected LP-S or LP-M station is restored to the air”<sup>8</sup> must be thought through. It is unclear, for example, how the “remaining” stations (aside from the theoretical one “monitoring” station) would be able to determine whether the LP-S or LP-M station had lost transmission and when transmission had been restored. Moreover, Petitioners do not articulate precisely how the remaining stations would transmit non-English state and local emergency information or define what constitutes “at least as part of their broadcasts.” Petitioners apparently assume that the LP-S and LP-M stations would originate non-English EAS warnings. But if the LP-S and LP-M stations are non-operational, it is not clear how this can be accomplished. If the LP-S or LP-M station is off-air, how would they receive non-

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National Science and Technology Council Committee on Environment and Natural Resources, Nov. 2000 at 29.

English EAS transmissions? From the LP-1 stations, from state and local “emergency operations centers,” or from another source? In sum, the Petition does not provide sufficient information upon which the Commission could effectively implement the requested relief.

**IV. Conclusion.**

For the above-described reasons, NAB has supported in the past and continues to support various efforts to improve EAS, including means by which all persons can be effectively alerted. The Commission should continue to consider the issues raised by the *Petition*. NAB looks forward to a continued dialogue exploring how local, state and federal agencies, through the voluntary cooperation of broadcasters, can better serve non-English speaking persons.

Respectfully submitted,

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BROADCASTERS**

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<sup>8</sup> *Petition* at 15.